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Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 28 January 2015 from the Permanent Mission of France to the United Nations addressed to the Chair of the Committee

The Permanent Mission of France to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and has the honour to transmit herewith a report on the implementation of resolution 2094 (2013), submitted in accordance with paragraph 25 of that resolution (see annex).

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Annex

Report of France to the Security Council on measures taken to implement resolution 2094 (2013)

I. Introduction

Security Council resolution 2094 (2013) substantially reinforces the sanctions regime against the Democratic People's Republic of Korea, in particular by strengthening measures in the areas of finance, inspection of suspicious cargo and inclusion of additional individuals, entities and goods on the sanctions lists.

In paragraph 25 of resolution 2094 (2013) of 7 March 2013, the Security Council "calls upon all States to report to the Council within 90 days of the adoption of the present resolution, and thereafter upon request by the Committee, on concrete measures they have taken in order to implement effectively the provisions of the present resolution"; in paragraph 26, it "also calls upon all States to supply information at their disposal regarding non-compliance with the measures imposed by resolutions 1718 (2006), 1874 (2009), 2087 (2013) or the present resolution".

In accordance with these provisions, France wishes to bring to the attention of the Security Council the following information on the measures it has taken in order to implement resolution 2094 (2013).

These measures fall within the broader framework of strengthened European Union action to combat proliferation. Adopted in 2008 during France's term as President of the Council of the European Union, and extended by Council document 15104/13 of October 2013, the "new lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems" strengthen the implementation of the 2003 European non-proliferation strategy, in particular in terms of combating proliferation flows, controlling access to sensitive information and adapting to the strategies of proliferators.

It may be recalled that the Council of the European Union has adopted two common positions concerning restrictive measures against the Democratic People's Republic of Korea: 2006/795/CFSP and 2009/573/CFSP, which reflect the provisions of Security Council resolutions 1718 (2006) and 1874 (2009). These measures include, in particular:

- An embargo on arms and related materiel, sensitive items and related services or financing;
- A ban on the import or transport of the aforementioned items, whether or not originating in the Democratic People's Republic of Korea;
- A ban on the supply of luxury goods;
- Travel restrictions in the territory of the States members of the European Union;
- Measures to freeze financial assets;
- Concerted action by the member States to prevent illicit trafficking in weapons of mass destruction, their means of delivery and related materiel and technologies;

- A total embargo on the export to the Democratic People's Republic of Korea of the dual-use items listed in Council Regulation (EC) No. 428/2009 and of other items which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;
- A ban on the import or transport of the aforementioned items, whether or not originating in the Democratic People's Republic of Korea;
- A ban on the provision of any technical or financial assistance related to such items which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;
- An obligation not to enter into new commitments for grants, financial assistance or loans to the Democratic People's Republic of Korea and to reduce current commitments;
- Enhanced vigilance with regard to:
  - Access to sensitive training;
  - Air or sea transport of merchandise from or to the Democratic People's Republic of Korea;
  - Financial flows;
- Extended lists of individuals and entities subject to the financial asset freeze and travel restrictions.

For certain provisions of these common positions which fall within the competence of the European Community, the Council of the European Union adopted Council Regulation (EC) No. 329/2007 of 27 March 2007[a] and Council Regulation (EU) No. 1283/2009 of 22 December 2009.

Decision 2013/88/CFSP also prohibits:

- The sale, purchase, transportation or brokering of gold and precious metals, as well as of diamonds, to, from or for the Government of the Democratic People's Republic of Korea; the delivery of newly printed or minted or unissued Democratic People's Republic of Korea-denominated banknotes and coinage to or for the benefit of the Central Bank of that country; and the sale or purchase of public or public-guaranteed bonds of the Democratic People's Republic of Korea;
- The provision of insurance and reinsurance services;
- The opening of new branches, subsidiaries or representative offices of banks of the Democratic People's Republic of Korea in the territories of member States, and the establishment of new joint ventures, or the taking of an ownership interest by banks of the Democratic People's Republic of Korea, including the Central Bank, with banks in the jurisdiction of member States.

European regulations are legally applicable directly and immediately in all European Union countries as soon as they are published in the *Official Journal of the European Union*. Accordingly, these texts need not be transposed into national

[a] Amended by European Commission Regulations (EC) Nos. 117/2008 (28 January 2008), 389/2009 (12 May 2009) and 689/2009 (29 July 2009).

law. Both Council Common Position 2009/573/CFSP and Council Regulation (EU) No. 1283/2009 have been published in the *Official Journal*.

At the national level, France has strengthened its domestic law by means of the Act of 14 March 2011 on combating the proliferation of weapons of mass destruction and their delivery systems. In particular, this Act establishes the financing of proliferation as a separate offence, making France the only State in the world to have such legislation.

The present report describes the measures taken by France pursuant to paragraphs 7, 8, 11, 12, 14, 15, 22, 23, 24 and 30 of resolution 2094 (2013).

II. Embargo and asset freeze

Implementation of paragraph 8 of resolution 1718 (2006) and paragraphs 9 and 10 of resolution 1874 (2009), reinforced by paragraphs 7, 22 and 23 of Security Council resolution 2094 (2013)

A. Embargo on arms and related materiel

The scope of this prohibition is defined by Council Regulation (EC) No. 329/2007 and covers all items included in the Common Military List of the European Union (the latest version of the Common Military List was adopted by the Council of the European Union on 17 March 2014 and was published in the *Official Journal* on 9 April 2014). The export from France of war materiel is strictly controlled on the basis, inter alia, of article L2335-2 of the Defence Code (an instrument having the force of law), which prohibits the unauthorized export, under any customs regime, of war materiel or related items. The scope of this prohibition is defined by the Decree of 27 June 2012, as amended, which repeats the items in the Common Military List of the European Union and adds space-related items and technologies. The law provides for criminal penalties in cases of failure to comply with the legislative and regulatory provisions concerning the export of war materiel and related items (Defence Code, art. L2339-11).

Export licences, which constitute an exception to that prohibition, may be issued only on completion of an interministerial review procedure. However, in the light of Security Council resolution 1718 (2006), Council of the European Union Common Position 2006/795/CFSP and amended Council Regulation (EC) No. 329/2007, the interministerial commission to review exports of war materiel would reject any application for a licence to export war materiel to the Democratic People's Republic of Korea. Nonetheless, no French company has sought a licence to export such items to that country for many years.

B. Embargo on items, materials, equipment, goods and technology which could contribute to the nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes of the Democratic People's Republic of Korea

Under the interministerial procedure for reviewing applications for licences to export dual-use items, all applications for licences to export items listed in Council Regulation (EC) No. 428/2009 of 5 May 2009 (last amended by delegated Council Regulation (EC) No. 1382/2014 of 22 October 2014, which entered into force on 30 December 2014) are denied.

The separate measures adopted by the European Union, initially taken on 22 December 2010 with the addition of an annex V listing the individuals designated pursuant to article 6, paragraph 2, of the Regulation, were reinforced on 18 February 2013 in response to the third nuclear test carried out by the Democratic People's Republic of Korea and include a supplementary list of dual-use goods and items whose export is prohibited.

C. Embargo on luxury goods and gold and precious metals

All French business operations have access to RITA, the national comprehensive listing of tariffs, which reflects the provisions of amended Council Regulation (EC) No. 329/2007 (list of luxury goods in annex III) and the TARIC tariff database of the European Community.

The French customs services systematically certify that exports to the Democratic People's Republic of Korea do not include items listed in annex III of amended Council Regulation (EC) No. 329/2007. If the merchandise being exported is confirmed as appearing on the list in annex III, its export is prohibited.

Council Decision 2013/88/CFSP includes restrictive measures concerning gold and precious metals.

D. Ban on the provision of technical or financial assistance related to transfers to or from the Democratic People's Republic of Korea of weapons or of items, materials, equipment, goods and technologies which could contribute to nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes

This ban is provided for in amended Council Regulation (EC) No. 329/2007, which prohibits the direct or indirect provision to the Democratic People's Republic of Korea of technical or financial assistance related to the supply, manufacture, maintenance or use of weapons or of items, materials, equipment, goods and technologies which could contribute to nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

This regulation also prohibits the direct or indirect acquisition from the Democratic People's Republic of Korea of technical or financial assistance related to the supply, manufacture, maintenance or use of weapons or of items, materials, equipment, goods and technologies which could contribute to nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

Council Common Position 2009/573/CFSP requires the States members of the European Union to exercise enhanced vigilance in order to prevent specialized teaching or training of nationals of the Democratic People's Republic of Korea, within their territories or by their nationals, in disciplines which could contribute to its nuclear activities. In order to prevent the transfer of knowledge or expertise which could contribute to proliferation programmes, access to research and higher education institutions which are deemed to be sensitive is subject to authorization by the relevant line ministry. On the basis of Security Council resolutions 1718 (2006) and 1874 (2009), common positions of the European Union and amended Council Regulation (EC) No. 329/2007, no such authorization is granted to nationals of the Democratic People's Republic of Korea in France.

E. Freezing of financial assets and economic resources and prohibition of funding

On the basis of the sanctions lists issued by the relevant Security Council Committee, the European Union has transcribed the names of listed individuals and entities in Community regulations (Commission Regulation (EC) No. 389/2009 of 12 May 2009 and Commission Regulation (EC) No. 689/2009 of 29 July 2009). The European Union has issued a supplementary list of 4 entities and 13 individuals subject to an asset freeze. Banks and financial institutions in France are informed of these measures via, inter alia, the website of the Department of the Treasury and are required to implement them (see http://www.tresor.economie.gouv.fr/3751_Coree-du-Nord).

On the basis of United Nations resolutions and European texts, towards the end of January 2014, France proceeded to designate an additional three individuals subject to the asset freeze under a decree issued by the Minister of Finance and Public Accounts pursuant to articles L562-2 ff. of the Monetary and Financial Code. Those designations were made on the ground that those individuals are at risk, on account of their functions, of committing acts in relation to the Democratic People's Republic of Korea that are referred to or prohibited by resolutions adopted under Chapter VII of the Charter of the United Nations or decisions taken under article 15 of the Treaty on European Union. That freeze, for an initial period of six months, was extended at the end of July 2014.

F. Denial of entry into the territory

Since the announcement of the nuclear test carried out on 9 October 2006, France has severely restricted access to its territory by nationals of the Democratic People's Republic of Korea. Under amended Council Regulation (EC) No. 539/2001 of 15 March 2001, nationals of that country are required to have a visa in order to enter the Schengen Area. The aforementioned common positions forbid the States members of the European Union to issue visas to persons listed in the annexes to amended Council Regulation (EC) No. 329/2007 (unless specifically excepted under Security Council resolutions). Visa applications from non-listed persons with high-level State or Party responsibilities are examined by the French authorities on a case-by-case basis and, barring some exceptions, are denied.

G. Inspection of cargo shipped to or from the Democratic People's Republic of Korea

In accordance with Council Common Position 2009/573/CFSP, Council Regulation (EU) No. 1283/2009 requires enhanced measures for monitoring air or sea shipments of merchandise to or from the Democratic People's Republic of Korea.

Under these provisions, cargo aircraft and merchant vessels travelling to or from the Democratic People's Republic of Korea, as well as vessels of that country, are required to submit pre-arrival or pre-departure information for all goods brought into or out of the European Union.

Special control measures applicable to trade from and to the Democratic People's Republic of Korea have been implemented by the French customs authorities. These measures apply to exports to or imports from the Democratic People's Republic of Korea of weapons and goods which could contribute to nuclear-related, ballistic missile-related or other weapons of mass destruction-

related programmes. In addition, the fraud monitoring system is alerted to any shipments of prohibited items that may be transported by sea to or from the Democratic People's Republic of Korea.

III. Financial sanctions

Implementation of paragraphs 18, 19 and 20 of Security Council resolution 1874 (2009), reinforced by paragraphs 8, 11, 12, 14, 15 and 30 of resolution 2094 (2013)

A. Ban on the provision of financial services or the transfer of any financial or other assets or resources which could contribute to the nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes of the Democratic People's Republic of Korea

Amended Council Regulation (EC) No. 329/2007 requires financial and credit institutions in the European Union to exercise vigilance with regard to activity on the accounts of entities domiciled in the Democratic People's Republic of Korea or of establishments not situated in its territory but controlled by such entities or by persons domiciled there. In particular, under that Regulation, financial and credit institutions must insist that all information required in the payment instructions concerning the originator and beneficiary of a transaction be provided; otherwise, the transaction must be refused. These institutions are further required to report transactions to the financial intelligence unit, TRACFIN, when a connection with the financing of proliferation is suspected.

B. Obligation not to enter into new commitments for grants, financial assistance or loans to the Democratic People's Republic of Korea and to reduce current commitments

France provides no financial assistance or concessional loans, either individually or through its participation in international financial institutions, to the Democratic People's Republic of Korea, except for the purposes specified by the Security Council.

C. Obligation not to provide public financial support for international trade which could contribute to the nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes of the Democratic People's Republic of Korea

Since the adoption of Security Council resolution 1737 (2006), France has applied the same warning system established by the French export credit insurance agency (Compagnie française d'assurance pour le commerce extérieur) to the Democratic People's Republic of Korea, at the request of the Ministry of Economic Affairs, Industry and Employment. Companies wishing to export goods to the Democratic People's Republic of Korea and applying for credit insurance from the Compagnie française d'assurance pour le commerce extérieur must sign a document whereby they undertake to comply with the specific regulations governing exports of dual-use goods and technologies. Failure to report that the goods, services or technologies in respect of which the credit insurance application is filed could be intended for or contribute to the nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes of the Democratic People's Republic of Korea will entail the loss of rights under the credit insurance policy. In addition to these measures, the French Export Credit and Guarantee Commission

exercises vigilance and caution with respect to the credit insurance applications it receives and considers each application on a case-by-case basis.

IV. Individual sanctions

Implementation of paragraph 24 of Security Council resolution 2094 (2013)

The European Union has independently adopted supplementary lists of individuals and entities subject to a travel ban and asset freeze. A total of 17 individuals and 16 entities have been placed on these separate European Union lists.

At the end of January 2014, France listed some additional individuals at the national level (see part II (E) above).